



Australian Government

Defence Honours and Awards Appeals Tribunal

Parsons and the Department of Defence [2022] DHAAT 01 (11 February 2022)

File Number 2021/005

Re **Mr Barry Parsons**
Applicant

And **Department of Defence**
Respondent

Tribunal Ms Josephine Lumb (Presiding Member)
Major General Simone Wilkie AO (Retd)

Hearing Date 18 November 2021

Appearances Mr Barry Parsons (via videoconference)

Mrs Catherine Morris
Ms Victoria Beahan
Directorate of Honours and Awards,
Department of Defence

DECISION

On 11 February 2022 the Tribunal affirmed the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Barry Parsons is not eligible for the award of the Timor-Leste Solidarity Medal.

CATCHWORDS

FOREIGN AWARD – Timor-Leste Solidarity Medal – injury on operation - service less than the required period — whether service ‘extraordinary’ – no discretion

LEGISLATION

Defence Act 1903 – Part VIIC – Sections 110T, 110V(1), 110VB(2), 110VB(6).
Democratic Republic of Timor-Leste Decree Law 15/2009, promulgated 9 March 2009.

REASONS FOR DECISION

Introduction

1. Mr Parsons seeks review of a decision dated 3 April 2014, in which the Directorate of Honours and Awards of the Department of Defence (the Directorate) conveyed the advice of the Assistant Defence Attaché, Australian Embassy Dili, that Mr Parsons is not eligible for the award of the Timor-Leste Solidarity Medal (TLSM) for his service in Timor-Leste on Operation ASTUTE from 3 February 2012 to 3 April 2012.¹

2. The Directorate submits that Mr Parsons is not eligible for the TLSM because he does not meet the eligibility criteria by serving the stipulated minimum number of days in Timor-Leste, within the specified operational area and during the requisite timeframe. Further, the Directorate submits there is no evidence that Mr Parsons' service meets the requirement of being an 'extraordinary case' which may otherwise allow grant of the award, despite the minimum period of service not being met.

3. Mr Parsons contends that there are extraordinary circumstances which apply to his service in Timor-Leste and that he should be awarded the TLSM. Specifically, he contends that a shoulder injury he sustained in Timor-Leste – which was subsequently accepted as being service-related by the Department of Veterans' Affairs (DVA) – prevented him from serving the number of days required to qualify for the award.

Decisions under review

4. The chronology of Defence's consideration of Mr Parsons' eligibility for the TLSM is set out in the Defence submission.² In summary, Mr Parsons first made application for the TLSM on 1 March 2014, via the Directorate. The Directorate subsequently requested further evidence related to Mr Parsons' shoulder injury, which Mr Parsons duly provided. On 26 March 2014, the Directorate forwarded his application to the Assistant Defence Attaché (ADA), Australian Embassy Dili. In response, the ADA advised the Directorate on 3 April 2014 that Mr Parsons' application for the TLSM had been unsuccessful:

*"The President will normally consider those cases where the member was returned to Australia on grounds of a Medical or Compassionate nature. In this case Warrant Officer Parsons indicates that he was a temporary fill and his return to Australia occurred once his replacement was available to deploy. I acknowledge that he suffered a service injury whilst deployed, however, there is no indication that the injury sustained was the reason the member returned to Australia, it indicates that the member returned to Australia at the end of his deployment. Based on the information provided, the Embassy would not endorse this member's application and therefore recommend that no further submission is made on behalf of WO2 Parsons."*³

¹ Mr Parsons' Application for Review to Tribunal, dated 14 March 2021.

² Defence submission to the Tribunal, dated 18 May 2021.

³ Email from Australian Embassy in Dili to DH&A Mr Steven O'Brien dated 3 April 2014.

5. The ADA's advice was subsequently conveyed to Mr Parsons by the Directorate via email on 3 April 2014.

Tribunal jurisdiction

6. The TLSM is a foreign award. The term *foreign award* is defined in s110T of the Defence Act as *an honour or award given by a government of a foreign country, or by an international organisation*. In considering any application for review the Tribunal is bound by the relevant eligibility criteria for a particular honour or award: s110VB(6) of the *Defence Act 1903*. In that regard, the Tribunal has no discretion.

7. The Australian Government has never been the approving authority for the TLSM. However, the President of Timor-Leste included in his Decree that relevant authorities apply scrutiny to ensure that only members who satisfy the criteria are included.⁴ All Australian nominations were to be '*centralised, vetted and submitted*' for his consideration. In scrutinising applications, arguably Australian delegates had the power to make decisions in respect of applications.

8. The Tribunal was satisfied that the Directorate's decision dated 3 April 2014, conveying the advice of the ADA, constitutes a refusal to recommend the award, thus satisfying the requirements of s110V(1)(a) and (b) of the Act and creating the *reviewable decision*.

Mr Parsons' service history

9. Mr Parsons enlisted in the Australian Army Reserve (ARES) on 6 December 1972 and served with 1/19 RNSWR (Royal New South Wales Regiment). He lastly served as WO2, Manager of Company Operations/ Rifleman/ Infantry Group. He was discharged on 23 January 2019 as Medically Unfit for Service.

10. Mr Parsons' Australian Defence Organisation (ADO) Service Record⁵ shows that he undertook full time service on four occasions in 2008, 2010, 2012 and the last ending on 31 January 2015. Mr Parsons served overseas on two occasions: the first on Operation ANODE in the Solomon Islands between 23 July 2008 to 7 December 2008 and the second on Operation ASTUTE within the specified area of Timor-Leste from 03 February 2012 to 04 April 2012, being a total of 62 days.⁶

11. Mr Parsons has been awarded the following in recognition for his service:

- Australian Service Medal with Clasps 'Solomon Islands 2' ('SOLIS2') and 'TIMOR-LESTE';
- Australian Operational Service Medal – 'Border Protection';
- Reserve Forces Medal with 5 Clasps;
- Australian Defence Medal;
- Operational Service Badge (OSB).⁷

⁴ Democratic Republic of Timor-Leste Decree of Law 15/2009, promulgated 9 March 2009.

⁵ Parsons, Barry Charles 8229461, Report of ADO Service Record.

⁶ Ibid.

⁷ Defence submission to the Tribunal, dated 18 May 2021.

Eligibility Criteria for the Timor-Leste Solidarity Medal

12. The TLSM was established on 21 August 2008 by the Government of the Democratic Republic of Timor-Leste through the Office of the President. The award was offered to Australia and other participating nations to recognise foreign police and military members for their contribution to the peace and stability of Timor-Leste's emerging democracy. Australia's contribution included Operation ASTUTE.

13. The Government of Timor-Leste set the eligibility criteria, and provided guidance over time to expand on those criteria. The background to the criteria and guidance is set out in full at Annexure A.

14. The following is a compilation of the eligibility criteria and the associated guidance by the President of Timor-Leste, namely:

- a. personnel that have served a minimum of 180 days continuous or accrued service in Timor-Leste from 1 May 2006 will automatically qualify;⁸ ⁹or
- b. nominations will be considered on a case-by-case basis for personnel that have served a minimum of 120 days in Timor-Leste from 1 May 2006;¹⁰ or
- c. nominations will be considered for personnel who have served 90 days in Timor-Leste where the commencement of that service was in May or June 2006;¹¹ or
- d. the President of the Republic may consider extraordinary cases outside the above time-periods. Applications for extraordinary cases must be endorsed and submitted through the Directorate of Honours and Awards, to be considered and approved by the President of the Republic. However, service may still only count from 1 May 2006.¹²

15. Relevantly, what might be suitable justification for 'extraordinary consideration' was stated to be:

- a. a member who is returned to Australia early because of injuries sustained on operations in Timor-Leste; or
- b. a member who is returned to Australia for compassionate reasons, but each compassionate circumstance would be considered on its individual merit.¹³

16. Relevantly, what would not normally be considered suitable justification for 'extraordinary consideration', was said to be:

⁸ Democratic Republic of Timor-Leste Decree of Law 15/2009, promulgated 9 March 2009 Article 3 Clause 2(a).

⁹ Democratic Republic of Timor-Leste, letter of offer, 21 August 2008.

¹⁰ Democratic Republic of Timor-Leste Decree of Law 15/2009, promulgated 9 March 2009 Article 3, Clause 2(b).

¹¹ Ibid Clause 2(c).

¹² Information DEFGRAM 766/2012 Paragraph 2, 5 November 2012.

¹³ Minute, Assistant Defence Attaché, Australian Embassy Dili, dated 25 November 2011.

- a. a member, or members, returned to Australia because their mission has been completed - this would generally apply across all qualifying service periods (90, 120 and 180 days) and would be applied consistently even if members missed only one day of qualifying service; or
- b. a member who completed an intended 'short-term' mission regardless of the qualifying service period the member was operating in; or
- c. a member who is returned to Australia for career management reasons (posting, promotion, courses); or
- d. a member who is returned to Australia for personal reasons (i.e. the member asks to be returned to Australia).¹⁴

17. The Directorate has only been an administrator for this foreign award, which can only be approved by the Government of Timor-Leste even though, as noted above, Australian authorities were granted the authority to apply scrutiny in administering the awards and submitting applications to the Government of Timor-Leste for final approval.

18. The TLSM is awarded in addition to the Australian Service Medal with Clasp 'TIMOR-LESTE' which is issued by the Australian Government to recognise service in Timor-Leste as part of Operation ASTUTE.

Procedure for applying for the TLSM

19. The Directorate was responsible for submitting nominal lists and applications based on the eligibility criteria, inclusive of those applications considered to be 'extraordinary'.

20. Nominations were forwarded through the Assistant Defence Attaché of the Australian Embassy in Dili to the Office of the President of Timor-Leste for consideration of approval for the medal. All approvals were notified by Presidential Decree. Notification of non-approval from the Office of the President or guidance about the qualifying criteria was provided through written advice to the Attaché.

21. In DEFGRAM No 766/2012 issued on 5 November 2012, the Department of Defence stated that it had been advised that *'the award of the TLSM will cease at the end of 2012 and no further applications would be considered in 2013 or beyond'*.¹⁵ The Directorate required all outstanding applications for the TLSM to be submitted by 16 November 2012 to submit to the Government of Timor-Leste prior to the cut-off date.¹⁶ (The DEFGRAM then expired on 5 February 2013).

¹⁴ Ibid.

¹⁵ DEFGRAM No 766/2012 issued 5 November 2012 Also see also DEFGRAM NO 410/2009, issued 7 July 2009.

¹⁶ Ibid.

Mr Parsons' submission

22. Mr Parsons readily concedes he does not have the minimum of 120 days' service in Timor-Leste during the specified period. He accepts that he has only 62 days' service. He submits that in his case there are extraordinary considerations as to why he should be awarded the TLSM, related to an injury he sustained to his shoulder while serving in Timor-Leste. In summary, Mr Parsons contends that if this injury had not occurred, he would have continued to serve the requisite number of days. In his application to the Tribunal Mr Parsons elaborates that:

"As a reservist I was placed on a twelve months CFTS (continuous full time service) contract in order to conduct lead up training for three months in Puckapunyal then to serve in Timor-Leste in Anzac Company TLTG 4 for three months, then return to Australia. Whilst on TLTG 4, I served as Weapons Warrant Officer between 03/02/2012 and 03/04/2012.

I held this position on the understanding that I was to fill that position for 3 months, until the original appointee a (Victorian Police Officer) had court appearances in Victoria which would preclude him from the first three months of his TLTG deployment. However the court case finalised earlier, and I was [relieved] of my position and returned to Australia on 03/04/2012. Whilst on duty in Timor-Leste I received a severe vehicle related injury that was subsequently accepted by the Department of Veteran Affairs.

On return to Australia I was immediately moved into training and administration role to assist in a plan/mount TLTG 5, as CSM for that push. I continued in this role, until 01/08/2012.

*I felt forced to submit a month's notice to cease my contract as it became apparent due to the lack of defence decision making, internal politics and ploys that I was no longer considered for the position on TLTG 5, however strangely enough I was offered a variety of internal training roles. I firmly and wholeheartedly believe that the reasons behind my removal from TLTG 5 derived from my physical injury sustained whilst serving in TLTG 4. If I had not been excluded from TLTG 5, I would have fulfilled the requirement for the TLSM."*¹⁷

Defence submission

23. Defence submits that the decision by the ADA dated 3 April 2014 to refuse to nominate Mr Parsons for the TLSM on the basis that his service in Timor-Leste does not fulfil the eligibility criteria was correct. Further, Mr Parsons' service in Timor-Leste did not reveal any circumstances which would put his service in the 'extraordinary consideration' category. While Defence accepts that Mr Parsons sustained an injury to his shoulder while serving in Timor-Leste, this injury was not the cause of his earlier than expected return to Australia. In summary, Mr Parsons' application had been considered and correctly rejected in 2014, and that

¹⁷ Mr Parsons' Application for Review to Tribunal, dated 14 March 2021.

there are now no grounds for the Directorate or for the Tribunal to make such a recommendation in favour of the award.

24. The Defence submission also refers to the awarding of the TLSM having ceased at the end of 2012, as advised by DEFGRAM No 766/2012 issued on 5 November 2012, but notes that the Directorate nonetheless continues *‘to make infrequent enquiries to the ADA in Dili on behalf of applicants seeking further consideration for the medal’*.

25. Following questions from the Tribunal at hearing, Defence provided details on the number of such applications forwarded for consideration to the Government of Timor-Leste. Defence advised that on 5 May 2020 a list of 13 members was sent to the Australian Embassy in Dili for advice. Mr Parsons was not included in this list as he was already advised in 2014 that his circumstances were not considered as extraordinary. Defence advised that a response has not yet been received, despite the request having been followed up by the Directorate in February 2021. Those 13 nominations therefore remain outstanding in Defence’s view.¹⁸

Finding – Mr Parsons is not eligible for the TLSM

26. The Tribunal carefully considered all of the material and submissions put before it. The Tribunal noted that 120 days is the minimum possible period required in Mr Parsons’ case under the eligibility criteria dictated by the Government of Timor-Leste (paragraph 14 above and Annexure A refers), given that his relevant service did not commence in May or June 2006, meaning that the 90 day period does not apply in this case. The Tribunal found that Mr Parsons does not have the minimum of 120 days service in Timor-Leste during the specified time and that he was not returned early due to injury or compassionate reasons.

27. The Tribunal accepted that Mr Parsons sustained an injury to his shoulder in Timor-Leste, and that this injury has been accepted as service-related by DVA. The Tribunal further accepted that Mr Parsons’ shoulder injury was sufficiently serious to require ongoing medical treatment on return to Australia, including surgery.

28. The Tribunal was not satisfied, however, that Mr Parsons’ injury was the reason he was returned to Australia. Rather, the material before the Tribunal points to his deployment ceasing due to the earlier than expected availability of his replacement. The limited ‘extraordinary case’ exception permitted by the Government of Timor-Leste clearly stipulates that it applies only to those members who are returned to Australia early *‘because of’* injuries sustained on operations in Timor-Leste. There must be a causal link between the injury and the early return - the fact that an injury occurred is not sufficient.

29. The Tribunal noted Mr Parsons’ contention that he was originally scheduled to return to Timor-Leste as part of TLTG 5 – which would have enabled him to serve the additional days required – but that he was excluded from that subsequent deployment as a result of his shoulder injury. The Tribunal however accepted the Defence submission that *‘exclusion from a deployment prior arrival in the operational area is not a qualifying provision or exceptional consideration for the TLSM’*.¹⁹

¹⁸ Defence response to the Tribunal’s questions on notice from hearing.

¹⁹ Defence Submission to the Tribunal, dated 18 May 2021, dated 18 November 2021.

30. The Tribunal is bound by the eligibility criteria and Presidential guidance as set out paragraphs 14 to 16 above. There is no broad discretion to award the TLSM when the circumstances are ‘close to’, but do not fall within, the stated exceptions. This is particularly so when the criteria and guidance are set by a foreign government.

31. Mr Parsons’ service in Timor-Leste does not meet either, the minimum 120 day service requirement nor, the exceptions in the qualifying criteria and Presidential guidance for the TLSM as set by the Government of Timor-Leste.

32. For these reasons, despite the respected contribution of Mr Parsons in Timor-Leste, we have decided to not recommend to the President of the Democratic Republic of Timor-Leste, via the Minister, that he should be awarded the TLSM.

33. In making this finding, we do not take anything away from the very commendable service of Mr Parsons and those who served with him in Timor-Leste. We acknowledge Mr Parsons’ significant commitment to the Australian Army over a period of many years, which has been recognised by the Australian Government with a number of campaign awards, including the Australian Service Medal with Clasp ‘TIMOR-LESTE’.

DECISION

34. The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Barry Parsons is not eligible for the award of the Timor-Leste Solidarity Medal.

ANNEXURE A

Timor-Leste Solidarity Medal - Eligibility Criteria

The letter of offer of then President Jose Ramos-Horta of 21 August 2008 sets out the qualifying criteria for the TLSM relevantly below:

... "The criteria for qualification for this award is 180 days continuous or accrued service in Timor-Leste for uniformed service personnel (Police and Military) that have served on a mandated mission to assist with Peace and Stability operations. The start date for qualification is 1 May 2006 and only time served after this date will be included. There will be three categories considered for qualification for this medal, each of which will need to be submitted in separate lists. The first list is to include all service personnel serving over 180 days who will automatically qualify for the medal. The second classification is for those who served with a start date in May or June 2006 for a period of no less than 90 days.

*Special exception will be given to those personnel who served during the first response mission and they will be considered case by case. The final list is for all other personnel that have served a minimum 120 days to be considered for recognition on a case by case basis."*²⁰

In November 2008, the Australian Government accepted the offer of the TLSM from the President of the Democratic Republic of Timor-Leste.

The terms of letter of offer, as accepted became Decree Law, promulgated on 9 March 2009 by President of the Democratic Republic of Timor-Leste.²¹

Prior to August 2011, the President of the Republic arguably broadened the eligibility criteria to include consideration of 'extraordinary cases'. Relevantly,

*"The President of the Republic may consider extraordinary cases outside the above time-periods. Applications for extraordinary cases must be endorsed and submitted through the Directorate of Honours and Awards, to be considered and approved by the President of the Republic. However, service may still only count from 1 May 2006."*²²

Presidential Guidance

Through a minute from the Australian Defence Attache in Dili, on 25 November 2011, the President of the Democratic Republic provided guidance as to what would and would not be 'extraordinary consideration'. Relevantly, what might be suitable justification for 'extraordinary consideration':

²⁰ Democratic Republic of Timor-Leste, letter of offer, 21 August 2008.

²¹ Democratic Republic of Timor-Leste Decree Law 15/2009, promulgated 9 March 2009

²² Letter from Mr P Clarke, Director Honours and Awards to Lieutenant Colonel R Morley of the Australian Embassy of August 2011.

“A member who is returned to Australia early because of injuries sustained on operations in East Timor.

A member who is returned to Australia for compassionate reasons, but each compassionate circumstance would be considered on its individual merit.”²³

Relevantly, what would not normally be considered suitable justification for 'extraordinary consideration:

“A member, or members, returned to Australia because their mission has been completed this would generally apply across all qualifying service periods (90, 120 and 180 days) and would be applied consistently even if members missed only one day of qualifying service.

A member who completed an intended 'short-term' mission regardless of the qualifying service period the member was operating in...”

A member who is returned to Australia for career management reasons (posting, promotion, courses)

A member who is returned to Australia for personal reasons (i.e. the member asks to be returned to Australia). ”²⁴

²³ Minute, Assistant Defence Attaché, Australian Embassy Dili, dated 25 November 2011.

²⁴ Ibid.